IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12277 of 2001

with

SPECIAL CIVIL APPLICATION Nos 12278 to 12283 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAKSINH PARBATSINH JHALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12277 of 2001

MR SHITAL R PATEL for Petitioner No. 1

Mr.S.P.Hasurkar, learned AGP, for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

and

HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 31/08/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Rule. Mr. S.P.Hasurkar, learned AGP, waives service of rule on behalf of State of Gujarat and Mr. D.A.Bambhania, learned advocate, waives service of rule on behalf of respondent No.2. By consent of the counsel appearing in the matter, rule is fixed forthwith.

2. Mr. Shital Patel, learned advocate, appearing for the petitioners, has taken us through the petitions and the documents attached thereto. Challenge in these petitions is in respect of the notices issued by Talod Municipality to the respective petitioners dated 16.12.2001. The petitioners have also annexed various documents including the xerox copy of the receipt which shows that the petitioners had made payment by way of rent to Talod Municipality for the land that they have occupied and the resolution passed by the Executive Committee, Talod Nagarpalika dated 28.2.1992 and as the matter was taken before the appellate committee of Sabarkantha District Panchayat in Appeal, the petitioners have also annexed the said order passed by the appellate Committee of District Panchayat in Appeal No.57/92 dated 20.12.1991. As transpired that Civil Suit was also filed before the Civil Court at Prantij being Civil Suit No.46 of 1998 by Shri Khodabhai Rajgor and in the said suit the application for injunction was rejected by the learned trial Judge. The Resolution was passed by the Municipality under Resolution No.279 for regularization of the encroachment by encroachers by accepting some donation fees and as found from the order that Collector, Sabarkantha had accordingly while deciding the Appeal being Appeal No.11 of 1998 as per order dated 22.12.1999 has confirmed the ad interim stay which was granted earlier in respect of the Resolution passed by the Municipality under Resolution No.279 dated 24.8.98.

3. The reply affidavit is filed by Chief Officer Shri Patel in detail by his affidavit dated 19.1.2002 by denying averments made in the petitions by petitioners and by highlighting the case of the Municipality. In his affidavit he has also annexed various documents, namely, the public notices issued by the Municipality through Chief Officer on 31.7.98, 12.8.99 and 30.6.98. In paragraph 5 it is the case of the Municipality that the petitioners have suppressed the fact while approaching

this court and according to the Municipality that before issuance of public notices and even the notice under challenge dated 16.12.2001, the public notices were issued as referred to earlier and the said notices were also annexed to the affidavit. It is the case of the Municipality that to remove the encroachment the actions were taken though earlier by issuing public notices and inspite of that there was no compliance and accordingly the notices to the petitioners were issued on 16.12.2001 and it is their case that the petitioners have no case for which the petitioners have sought for relief.

4. As found from the petitions that the challenge in these petitions is only in respect of issuance of notice by the Municipality dated 16.12.2001 and the petitioners have sought for relief that the action initiated by the respondent by issuing notice be quashed and set aside and the Municipality by restrained from taking any step for removal of the cabins of the petitioners.

5. As per order dated 26.12.2001 when the learned single Judge has while issuing notice protected the petitioners by granting relief in terms of prayer clause 25(B) and accordingly the relief, which was granted earlier ex parte, is in force till today as from time to time ex parte relief was extended. As the matter was to be dealt with by the Division Bench, second set was furnished by Mr.Patel and we have to consider these petitions for admission and accordingly considering the submission made before us we issued rule.

6. It is true that Municipality had issued 3 public notices and petitioners were asked to clear the encroachment from the land. Inspite of the issuance of public notices, as there was no compliance and accordingly the Municipality had issued notice which is under challenge. It is the case of the petitioners that the petitioners are paying rent to the Municipality and the Municipality is accepting the rent and they are running their business. It is their case that the Municipality is also recovering the tax from the petitioners, for which they have also annexed the receipts issued by the Talod Municipality and the Electricity connections were taken by the petitioners from the Gujarat Electricity Board. As found, the notice under challenge was issued by the Municipality in which the petitioners were asked to remove the encroachment from the site by granting 24 hours time and according to the Municipality they have encroached upon the Municipal land and the petitioners were asked to clear the land by removing the encroachment and in case the petitioners

fail to remove the said encroachment, the petitioners were told that the said encroachment will be cleared by the Municipality at the cost of the petitioners. The petitioners have accordingly approached this court and the relief, which was granted in favour of the petitioners, is in force till date. The ends of justice will meet by treating the petition as reply to the notice dated 16.12.2001 for which the petitioners have to satisfy the Municipality with the documents on which they rely and even for the case that they are legally entitled for the land, they have to furnish the documents in support of their case and also alternatively pray for regularization of such encroachment and/or for seeking alternative accommodation, if it is found that the land in question has been encroached upon by the petitioners. Mr. Shital Patel appearing for the petitioners has submitted that the petitioners shall immediately in response to the notices issued, which are under challenge, submit their reply to the said notice by supporting their case by submitting documents to the Municipality on or before 13.9.2004. On receiving such reply from the petitioners, the Chief Officer, Talod Nagar Palika will examine the case put forwarded by the petitioners in response to the notice issued to them and decide the same in accordance with law by end of 30.9.2004 and the order passed thereon be intimated to the respective petitioners. As the interim relief is in force till today, till it decides the representations the Municipality will not implement the notices under challenge. We may make it clear that we have not examined the contentions raised in this petitions as well as also reply affidavit filed by the Municipality and not dealt with the petitions on merits. Rule is accordingly disposed off in each matter in the above terms, with no order as to costs.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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